

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 Case No. 21-22304-shl
4 Adv. Case No. 21-07093-shl
5 - - - - - x
6 In the Matter of:
7
8 THE GATEWAY DEVELOPMENT GROUP, INC.,
9
10 Debtor.
11 - - - - - x
12 CARNICELLI, JR., et al.,
13 Plaintiffs,
14 v.
15 SHESKIER, et al.,
16 Defendants.
17 - - - - - x
18
19 United States Bankruptcy Court
20 300 Quarropas Street, Room 248
21 White Plains, NY 10601
22
23 November 8, 2023
24 10:26 AM
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1 B E F O R E :

2 HON SEAN H. LANE

3 U.S. BANKRUPTCY JUDGE

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5 ECRO: ART

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1 HEARING re Status Conference Re: Doc. #61 Notice Of Proposed
2 Order Remanding Proceeding To Superior Court, State of
3 Connecticut

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5 HEARING re Status Conference Re: Doc. #65 Objection To
6 Proposed Order Filed On Behalf Of John J. Fareri, Julie
7 Fareri, Christopher Sheskier

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9 HEARING re Status Conference Re: Doc. #66 Letter Regarding
10 Objection Filed ON Behalf Of James Carnicelli Jr.

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25 Transcribed by: Sonya Ledanski Hyde

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P R O C E E D I N G S

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2 THE COURT: All right. The next case is the
3 Gateway Development Group, Inc., a Chapter 7. More
4 particularly, the adversary proceeding 21-7093, Carnicelli,
5 Jr., et al.

6 So, we are here because there was an objection
7 filed to a proposed order. And so, let me find out who is
8 here on behalf of the parties who submitted the original
9 proposed order.

10 MR. PASTORE: Good morning, Your Honor. Joseph
11 Pastore, and my firm represents Mr. Carnicelli.

12 THE COURT: All right. And on behalf -- anybody
13 else on that side of the equation who wants to enter an
14 appearance, and then I'll get the folks on the other side.

15 MR. GOLDMAN: Your Honor, Irve Goldman, formerly
16 (indiscernible) representing the Trustee, Howard Magaliff.
17 Good morning.

18 THE COURT: Good morning. All right. And then --

19 MR. GLUCKSMAN: (Indiscernible) James Glucksman,
20 for Carnicelli.

21 THE COURT: Oh. And let me find out who's here on
22 behalf of the folks who objected.

23 MR. SAMET: Good morning, Your Honor. Avery Samet
24 and my colleague Jeffrey Chubak, on behalf of the three
25 Defendants. And we put in a limited objection, yes.

1 THE COURT: All right. So, let me just, in the
2 interest of fairness, sort of tell you where I'm coming from
3 because I don't want to surprise anybody. I really thought
4 about editing the order and just entering it. But I don't
5 want the record to be unclear. Lack of clarity is not a
6 benefit for anybody. And it's just more efficient.

7 So -- but I will tell you where I'm starting from
8 is we have a rule for that. Right? And the reason we have
9 a rule is so we avoid having to bring our hands in these
10 circumstances, which is if we have authority to issue an
11 order, then we have authority. And if we don't, it's
12 considered a court recommendation, and any appeal then that
13 might be, of that order, would then be considered, or a
14 court recommendation that the district court is laying in
15 on. And so, we all know how to do that drill.

16 And since this issue wasn't raised in our very
17 lengthy extensive briefing and hearing, I really didn't
18 expect it to be an issue in this order. And I really loathe
19 to inject it now because it feels, it just doesn't feel
20 appropriate.

21 So, again, Mr. Samet, I wanted to let you know
22 where I'm coming from, just in the interest of full
23 disclosure, that you're sledding uphill. So, with that, Mr.
24 Samet, I'll start with you.

25 MR. SAMET: Thank you, Your Honor. And I

1 appreciate that. You know, this is a complicated issue of
2 federal jurisprudence, and I think it's reflected in Your
3 Honor's decision. Just to address exactly what Your Honor
4 just said, Your Honor, we filed a notice in this case,
5 Docket Number 36. We said we object entering any final
6 order (indiscernible) in this proceeding.

7 THE COURT: No, but -- wait.

8 MR. SAMET: That's what it says.

9 THE COURT: Wait, say that again.

10 MR. SAMET: At Docket 36 -- let me see if I can --
11 we objected to this Court's entry of final orders in this
12 proceeding. I can -- hold on. If I can do this do this
13 (indiscernible), Your Honor.

14 THE COURT: But why doesn't the rule solve the
15 problem? One of the reasons for the rule is so that we
16 don't spend a lot of time hammering on an issue -- I'm not
17 saying it's not important, but that nobody wants to write,
18 in every case where this could potentially could be
19 implicated, nobody wants to write the law review article on
20 the niceties of it here. And so, I'm not sure how your
21 client would in any way be damaged given the existence of
22 the rule, which the District Courts frankly, you know,
23 they're very conversant with this, and I think they feel
24 very comfortable.

25 And I've seen countless things go up to them,

1 where they parse through that, you know, with aplomb and
2 expeditiously, before moving onto whatever the issues are.

3 So, I just don't know -- you know, I mean, I could
4 -- so, the way to respond to that is to say let's put in the
5 order, say to the extent it's an important recommendation,
6 it's an important recommendation, to the extent the Court
7 has authority, it's a final order. But that's what the rule
8 says. And that's why we don't hash it out in every one of
9 these --

10 MR. SAMET: That's fine. And maybe I
11 misunderstood Your Honor. I don't have a problem with that.
12 I will tell Your Honor that in the cases that are, have been
13 cited, and (indiscernible) -- we looked at the case. It is
14 the procedure to fix it. I think the reason for that is to
15 make sure that the District Court does have an opportunity
16 to rule on it. Maybe we're right. Maybe we're wrong.
17 Maybe it doesn't matter. That's the only thing that we --

18 THE COURT: I mean, I don't want to -- again, it
19 sort of does get back to the ruling, which is you filed, I
20 think, saying you don't want the Bankruptcy Court to be the
21 place where the ultimate judgment is rendered. It really
22 does mystify me as to why you desperately want to stay here.
23 But we've talked about that already. So, putting that to
24 the side, that's fine. The rule that we have to address
25 this issue is designed to be fair and even minded, preserve

1 everybody's rights, but to allow the Court to not have to
2 essentially write separate decisions on this issue that are
3 very interesting.

4 But it took me a while frankly to get to a
5 decision, because it was interesting enough. And so, I
6 really don't want to delay things any further by essentially
7 putting on my law review article hat and addressing it. The
8 District Court will handle it with dispatch. If you're
9 right, you're right. And that's fine. So, I don't see how
10 the existing proposed order in any way impacts your -- the
11 rights of your clients negatively.

12 MR. SAMET: And that, well, if I may just, well,
13 (indiscernible) questions also (indiscernible) procedural
14 matter, we have to tell the Bankruptcy Clerk what we're
15 doing. And so, if the order said, you know, the District
16 Court, well, just quoted the 933 -- the rule which Your
17 Honor referenced. And Your Honor is right. That's already
18 the law. We still have to file either an objection pursuant
19 to (indiscernible) --

20 THE COURT: Well, yeah, but you do that and then
21 the District Court construes it under the rule and
22 applicable case law as it thinks it should properly be
23 construed.

24 MR. SAMET: As long as we have our ability to do
25 it, Your Honor, we make this objection because other judges

1 in this district have addressed it at this stage. And so,
2 (indiscernible) --

3 THE COURT: All right. I guess I'm just -- yeah,
4 I don't think that your rights are in any way implicated.
5 That's the point of the rule. It's one of these rules -- I
6 will just bore you for a second. Not to sound too pedantic.
7 But occasionally, we get -- we enter a rule, because we find
8 that there is an issue that doesn't necessarily add a whole
9 lot to the proceedings in what is the trial court, other
10 than delay and an additional thing to get through, when in
11 fact that is better sent to the District Court that is going
12 to be dealing with that issue anyway.

13 So, but we also deal with things like -- we got
14 rid of the need for bridge orders. Because we kept having
15 fire drills for bridge orders in large 11s, when you have an
16 exclusivity runout or some other deadline pass. And we're
17 not -- again, the reason why I mention it is because in all
18 these circumstances, we're not trying to negatively impact
19 anybody's substantive rights. We're trying to say as a
20 routine matter, in these circumstances, your rights are
21 preserved.

22 So, just, that's -- I just want to make it clear.
23 I understand -- I remember having clients. And I get it.
24 So, but I think the rule does that. And I think the idea of
25 what, for you to do, I think is you do what you -- I think

1 you're supposed to. But I think the rule preserves your
2 rights. That's my sense of it.

3 MR. SAMET: Thank you, Your Honor. As long as I
4 have that right to go to District Court reserved, I'm
5 satisfied. Thank you.

6 THE COURT: All right. Anybody on the other side
7 of this issue wish to be heard?

8 MR. GOLDMAN: May I be heard, Your Honor? Irve
9 Goldman.

10 THE COURT: Sure.

11 MR. GOLDMAN: Yeah, I'm reluctant to just what has
12 been proposed past, without voicing some objection because I
13 think it really is going to promote collateral litigation
14 over whether this is, should be presented as proposed
15 findings or not.

16 THE COURT: Well, and that seems to be the name of
17 the game in this particular case. Is there's a lot of
18 collateral litigation. Again, I'm not a settlement judge.
19 But I would urge the parties to just allow the case to get
20 to the merits. And again, I'm sorry it took me so long to
21 get you a decision. It does show that you have lots of
22 interesting issues.

23 But interesting, we know, in Bankruptcy Court, we
24 always see the S's as dollar signs. It's expensive. But I
25 guess we are where we are. So, Mr. Goldman, what do you

1 want to do? I'll make a ruling. That's fine. I'll take it
2 under advisement. And I'll make a ruling. And I'll get you
3 an answer in the next two weeks.

4 MR. GOLDMAN: Your Honor, I really think that
5 would be the way to go here because I think we're going to
6 be at it longer if --

7 THE COURT: Well, at a certain point, I don't
8 care. I mean, I was in court yesterday from 8:00 to 5:00
9 with a 15-minute break. I have a lot of things going on.
10 And at a certain point, I'm trying to move the line forward.
11 That's part of my job.

12 And so, but if parties insist on a ruling, that's
13 fine. You've filed. He filed his objection. You filed
14 your response. I'll make a ruling. Frankly, I think it is
15 a waste of my time, and I think it is a waste of all of your
16 time. But if that's the way it goes, then that's what I'll
17 do.

18 MR. GOLDMAN: Well, I want to -- my inclination is
19 defer to Your Honor's.

20 THE COURT: No, listen. Again, you have clients.
21 But the clients, if left to their own devices, I think it's
22 pretty clear, are going to fight. And that's what they've
23 been doing. And I think there was a brief shining moment
24 when everybody thought we'd agreed on a forum. But you've
25 spent a tremendous amount of time on forum issues that are

1 interesting, and therefore judges can't glibly rule on them.

2 But it's, the clients are fiddling while Rome
3 burns. And they're just -- but it's their money. So, I --
4 but you know, to the extent that the estate is involved,
5 it's the money of other creditors too. And it is
6 frustrating. But again, sometimes, you know, I'm the option
7 of last resort. So, I'm the blunt instrument. So, I'll do
8 what has to be done.

9 MR. GOLDMAN: So, well, Your Honor, so, if we can
10 explore this a little further, so maybe we can better --

11 THE COURT: But I have essentially a small brief
12 on the issue. You've said what you're going to say. I
13 don't know how much more I want to explore it frankly. But
14 is there any argument that wasn't raised in your letter
15 brief?

16 MR. GOLDMAN: No, Your Honor, what I was
17 suggesting we explore further is the idea, the
18 (indiscernible) proposal because I want to make sure I
19 understand what was proposed.

20 THE COURT: I'm not, it's the rule. So, here's
21 what we're doing. You all consult with your clients, and
22 you will send me each a one sentence letter. And it will
23 tell me whether you've reached an agreement on what to do,
24 or whether you need me to make a ruling. And if you need me
25 to make a ruling, I promise to do it as quickly as I can.

1 But I will say I also have cases -- and this is why it took
2 so long in the first place. I have cases in real time that
3 require attention.

4 And we probably have gotten, you know, five new
5 cases in the last 30 days. And again, I won't bore you with
6 -- I shouldn't bore you with all the things I have to do
7 because I know you could bore me with the things you have to
8 do. But that's, I just, you know, I'll get it done
9 promptly. And just give me, in 48 hours, one sentence.
10 That's all I need. And again, you have the right to ask for
11 you what you want me to do. That's fine. And again, I
12 recognize I'm stepping into the history of a parties
13 dispute. And you know, some cases are just like that.
14 Parties want to fight about everything. So, at a certain
15 point it becomes -- and I suspect it is in this case --
16 whatever the other side wants, I automatically don't want
17 that.

18 So, but again, that's fine. So, just let me know.
19 And I'm happy to make a ruling, unless you have something
20 that you both agree upon.

21 MR. GOLDMAN: Thank you, Your Honor. We'll try to
22 work it out, Your Honor. Thanks a lot.

23 THE COURT: Yeah, thank you.

24 MR. MAGALIFF: Your Honor, can I add one thing?

25 THE COURT: All right, Mr. Magaliff? Yeah, go

1 ahead.

2 MR. MAGALIFF: Howard Magaliff, Trustee. Just an
3 observation, Judge. I don't know if Mr. Samet is intending
4 to ultimately appeal remand or if this is just, you know,
5 standing on procedural ceremony so that the proceedings get
6 delayed. But it seems to me that if he's intending to
7 appeal remand, he can also appeal the entry of your order.
8 So, I would simply ask that you just enter the order on the
9 remand. And if he's going to appeal, he appeals. And if he
10 doesn't, we'll move onto the merits in Connecticut. That's
11 all.

12 THE COURT: All right. Well, I'll give you 24
13 hours to change your mind. Otherwise, I'll go that route.

14 MR. SAMET: Yeah, and Your Honor, this is Avery
15 Samet. That's what I understood Your Honor had proposed to
16 me, that our rights are preserved with it. And that's what
17 I understood at the outset of this.

18 THE COURT: Yeah, that's what the rule says. I
19 mean, that's why, you know, in terms of negotiating a
20 proposal, there is no proposal. I'm just telling you what
21 the rule says. You know, and as you know, we don't have
22 that many local rules. So, when we have a local rule, the
23 court has gotten together and said, damn, that's a good
24 idea, so we can avoid problems and inefficient litigation.
25 So, that's why I point it out.

1 So, it's not a negotiation. I'm not, you know, if
2 you've ever seen The Fugitive, I'm the Tommy Lee Jones guy.
3 I don't negotiate. So, I don't bargain.

4 So, I'm just telling you what the rules are. Ana
5 again, that's fine. I understand you're all (indiscernible)
6 advocating on behalf of your client. That's all fine, well
7 and good. And I appreciate that. And you're all very good
8 at your job. So, I will approach it that way unless
9 somebody tells me otherwise in the next 24 hours in a one
10 sentence letter. And that one sentence letter would just be
11 asking for a ruling on the dueling issues.

12 But with that, I wish you all a very Happy
13 Thanksgiving to you and your families and be well.

14 MR. GOLDMAN: Thank you.

15 MR. MAGALIFF: Thank you, Your Honor.

16 MR. SAMET: Thank you, Your Honor.

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
record of the proceedings.

Sonya M. Ledanski Hyde

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Date: November 16, 2023